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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/589,730	06/08/2000	Dale C. Kenison	99,267	9108

7590

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EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 02/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



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EXAMINER

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DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 1/9/02
☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-32 is/are pending in the application.
Of the above, claim(s) 5-9, 13-32 is/are withdrawn from consideration.
☐ Claim(s) _____ is/are allowed.
☒ Claim(s) 1-4, 10-12 is/are rejected.
☒ Claim(s) _____ is/are objected to.
☒ Claim(s) 1-32 are subject to restriction or election requirements.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 1/1
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES-

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Applicant's election with traverse of Group I with species of separate pellets, estrodiols and melangestrol in Paper No. 3 is acknowledged. The traversal is on the ground(s) that applicant requests with drawl of restriction, as. I and II are closely related and prior art would likely be the same for both groups. This is not found persuasive because as indicated in restriction of 10/9/01 alternative methods could be practiced with Group I, thus requiring other search areas.

The requirement is still deemed proper and is therefore made FINAL.

Claims 19-26, 5-9, 13-18, 27-32 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 3.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-4, 10-12 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. One of ordinary skill in the art would not know what constituter "cooperates" and how to achieve it Melengestrol would not be recognized as estrus suppressing (see Beal et al '86) or as an implant.

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Claims 2, 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

"Bio effective derivatives" in indefinite description, as Co_2 is a bio effective derivative of estradiol. Claim 11 should be 2 claims; one to Projections.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Magruden et al 573100.

Magruden provides implants in solid boil accessible form, suitable for implanting in (col. 1, lines 35-37) find environments, of growth stimulating agent that cooperates – salt. Subcutaneous implantation is taught at col. 7, lines 12-14.

Claims 1-4, 10 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Cardamone et al 5980508.

The instant compounds (col. 4, 5)-estradiol, progesterone (estrus suppressing other projections), favored (col. 5, bottom) in combination, implantable I pellet (capsule) form are disclosed (col. 6, line 41-63). Fig. 2 shows multiple pellets # 118 in the implant; example 1 shows porcine growth hormone as a single agent. Example 2 shows a growth stimulating and cooperating agent, growth hormone and vaccine. Example 6 shows even more (4) delivery stages subcutaneous implant of sheep is shown at col. 20. Immediate and timed delayed release is shown (Example 3). See also Fig. 22.)

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Runkel et al 5035891.

Runhel also provides multiple active containing implantable pellets (col. 11, lines 18-25) of the instant estradiol antibiotics, trenbolone, testosterone supplemental against to enhance efficacy include solidifying and rate controlling agents (col. 1, lines 18-53), or as antibiotic in immediate release mode (col. 7, top). Trenbolane is shown at 20-1000 mg dose (col. 7, line 11-18 useful for gain (col. 8, line 43-64), Trenbolone at 25 mg is shown with estrus suppressants (col. 13).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Enominger '78 in view of Runkel et al 5035891 and Samber et al 96 and Cardamone et al 5980508.

Enonminge (p. 225-Hornones- p.226) shows it was known to use the instant compounds for promoting growth (MGA, Zeranol, et al), in implants. Runkel (above) teaches the means to provide implant, including Trenbolene at the instant dosage with estrus suppressants shown is progesterone (Table, col. 13, G), (applicants MGA estrus suppressant is a derivative of progesterone) at the instant dosages. Dosage are shown as determinable by artisan, depending upon the species (col. 8, lines 54-64). Although Runkel doesn't specify MGA, Enominger shows it effective as feed, with no distinction on growth promotion of any one of the recognized hormones. The particular delivery form is within the purview of the artisan to provide depending upon the species, age, sex, weight/ health and immune condition of the animal. Thus, one of ordinary skill in the art would find it obvious to use a multiple dosage paired delivery system as of Cardamone in order to provide a pellet of MGA in female cattle to suppress estrus, while a second pellet with faster release would be loaded with Trenbolene to maximize growth promotion.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 703-308-2412. The examiner can normally be reached on Tuesday to Friday from 7 AM to 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for the organization where this application or proceeding is assigned is 703-308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

Levy/LR

January 28, 2002



NEIL S. LEVY

NEIL S. LEVY
PRIMARY EXAMINER